

WATER COUNCIL MEETING

Dept. of Environmental Services
29 Hazen Dr., Concord, N.H.

May 11, 2005
9:00 a.m.

Members present: Councilors DiMarzio, Bradley, Butler, Cowan, Ingham, Lussier, Lyons, Patenaude, and Varotsis

Members absent: Councilors Bridges, Barrett, Densberger, Dupee, Frost, Glines, and Phillips

Vice Chairman DiMarzio opened the meeting at 9:00 a.m.

1. Approval of Minutes of April 13, 2005 Meeting

A motion was made by Councilor Cowan to accept the minutes of the April 13, 2005 meeting as presented. The motion was seconded by Councilor Varotsis and unanimously voted.

2. Approval of State Aid Grants

Steve Snell of the Wastewater Engineering Bureau requested approval of two state aid grants as set forth in a memo from Bureau Administrator John R. Bush, P.E. to Harry T. Stewart, P.E., Director, Water Division dated May 2, 2005.

Councilor Bradley moved to approve the grants and recommend favorable action by the Governor and Executive Council by adoption of the following resolution in its entirety. Councilor Cowan seconded the motion and it was unanimously voted.

WHEREAS, The following municipalities have applied to the Department of Environmental Services, under the provisions of RSA 486, for grants in the amounts listed to aid in the defraying of the costs resulting from the construction of sewage disposal facilities, as defined in said Chapter:

<u>MUNICIPALITY</u>	<u>PROJ. NO.</u>	<u>PROJECT DESCRIPTION</u>	<u>AMOUNT</u>
Manchester	C-698	Crescent Road Pump Station Upgrade	\$ 340,031
Hanover	C-699	WWTF Interim Improvements, Phase I	147,398

WHEREAS, The Department of Environmental Services has examined said applications as to the eligibility of the construction costs for State contributions; and

WHEREAS, The Water Council finds that said projects are intended to control or reduce pollution in the surface waters of the State as defined in RSA 485-A;

NOW THEREFORE, The Water Council finds that all of the provisions of RSA 486 have been met by said applicants and respectfully recommends that the Governor and Executive Council approve said grants and authorize payment thereof through the Department of Environmental Services as provided for in said Chapter.

3. Approval of Public Water System Interconnection Grant

Robert Mann, P.E., Water Supply Engineering Bureau, requested approval of a grant under the State Public Water System Interconnection and Well Investigation Grant Program as set forth in a memo to Harry T. Stewart, P.E., Director, Water Division from Sarah Pillsbury, P.G., Administrator of the Water Supply Engineering Bureau dated April 29, 2005.

Councilor Bradley moved to approve the grant and recommend favorable action by the Governor and Executive Council by adoption of the following resolution in its entirety. Councilor Lussier seconded the motion and it was unanimously voted.

WHEREAS, The following water system has applied to the Department of Environmental Services, under the provisions of RSA 486-A, for a grant in the amount listed to aid in defraying the costs of establishing a regional water system with the Pembroke Water Works as defined in said Chapter:

<u>Public Water System</u>	<u>Grant#</u>	<u>Project</u>	<u>Amount</u>
Holiday Acres MHP	05-0043010-01	New well development	\$97,777.00

WHEREAS, The Department of Environmental Services has examined said application as to the eligibility of the project for state contributions; and

WHEREAS, The Water Council finds that said project is consistent with establishment of a regional water system as defined in RSA 486-A;

NOW THEREFORE, The Water Council finds that all the provisions of RSA 486-A have been met by said applicant and respectfully recommends that the Governor and Executive Council approve said grant and authorize payments thereof through the Department of Environmental Services, as provided for in said Chapter.

6. Other Business**Dam Rules**

James Gallagher, P.E., Chief of the DES Dam Bureau, presented proposed rules for review by the council. Councilor Butler asked that no action be taken until the council consults with its attorney regarding reference to RSA 541-A in the proposed rules. Mr. Gallagher requested that the councilors submitted their comments to him by June 15, 2005.

4. Status of Appeals

Michael Sclafani distributed an Appeals Status Report and reviewed pending appeals with the council.

- **Docket No. 03-10 WC - Appeal of Conservation Law Foundation**
On May 10, 2005 the appellant filed an Assented-To Motion to Lift Stay and Schedule a Pre-Hearing Conference.

Councilor Varotsis made a motion to grant the Assented-To Motion to Lift Stay and Schedule a Pre-Hearing Conference. Councilor Butler seconded the motion and it was unanimously voted.
- **Docket No. 03-14 WC - Appeal of Gerald A. Bell**
A stay remains in effect on this appeal pending the resolution of a declaratory judgment action before the Merrimack County Superior Court.
- **Docket No. 04-05 WC - Appeal of Freudenberg-NOK General Partnership**
An appeal hearing is scheduled for June 8, 2005 at 10:00 a.m. Mr. Sclafani commented that Attorney Blenkinsop, who represents DES, has filed a motion for declaratory judgment in superior court to determine the ownership of the dam, which is the subject of the administrative order under appeal. Mr. Sclafani added that it is likely that a motion to continue the June 8 appeal hearing will be filed pending the outcome of the declaratory judgment action.
- **Docket No. 04-15 WC - Appeal of Town of Nottingham Selectmen**
Mr. Sclafani distributed a copy of the draft Order Denying Motion for Reconsideration and Motion for Rehearing for review by the council.
- **Docket No. 04-17 WC - Appeal of Save Our Groundwater "SOG"**
Mr. Sclafani distributed a copy of the draft Order Denying Motion for Reconsideration for review by the council.
- **Docket No. 04-18 WC - Appeal of Thaddeus Dymon**
A stay remains in effect pending the resolution of a boundary line dispute in superior court.
- **Docket No. 04-19 WC - Appeal of Town of Newport**
See Docket No. 04-18 above.
- **Docket No. 04-22 WC - Appeal of Robert Chapman and Chapman Scrap Metal Recycling**
On April 27, 2005, appellants filed a withdrawal of this appeal.
- **Docket No. 05-01 WC - Appeal of PSNH**
On May 9, 2005 appellant filed an Assented-To Motion to Continue the appeal hearing scheduled for May 11, 2005 as the parties have reached a settlement agreement. On May 10, 2005 a Decision & Order was issued granting the Motion to Continue.
- **Docket No. 05-02 WC - Appeal of B&S Septic (Raymond St. Laurent)**
A pre-hearing conference is scheduled for May 23, 2005 at 9:00 a.m.

- **Docket No. 05-03 WC - Appeal of Robert C. Senter**

On May 3, 2005 appellant filed a monthly status report as required by the council's order of April 13, 2005 granting appellant's Request to Stay.

Councilor Bradley requested that the record reflect that his company does business with B&S Septic and Robert Senter, although he was not present for the April 13, 2005 votes in this appeal.

- **Docket No. 05-06 WC - Appeal of Ralph and Betsy Booth**

A pre-hearing conference is scheduled for May 23, 2005 at 10:30 a.m.

- **Docket No. 05-07 WC - Appeal of FOCUS Tamworth**

This is an appeal of Water Quality Certificate No. 2004-002 dated March 22, 2005. The appeal was timely filed on April 21, 2005. Attorney Anthony Blenkinsop filed an appearance on behalf of DES on May 2, 2005.

Councilor Butler made a motion to accept the appeal. Councilor Bradley seconded the motion and it was unanimously voted.

Vice Chairman DiMarzio will preside at the pre-hearing conference and appeal hearing.

5. Legislative Update

Rene Pelletier, P.G., Manager, Land Resources Management Programs, updated the council on pending legislation.

9:50 a.m.

Councilor Varotsis made a motion to go into executive nonpublic session to confer with council's attorney, Anne Edwards. Councilor Bradley seconded the motion and it was unanimously voted.

10:10 a.m.

Councilor Lussier made a motion to return to public session. Councilor Bradley seconded the motion and it was unanimously voted.

Vice Chairman DiMarzio added that no votes were taken during nonpublic session.

4. Status of Appeals, Cont'd

- **Docket No. 04-15 WC - Appeal of Town of Nottingham Selectmen**
- **Docket No. 04-17 WC - Appeal of Save Our Groundwater "SOG"**

Vice Chairman DiMarzio discussed the draft orders denying the motions for reconsideration and rehearing distributed to the council in the above appeals. No new evidence was presented to the council by the appellants and an opinion issued by the Attorney General's office dated September 2, 2004 stated that the Water Council does not have jurisdiction to hear the appeals.

Councilor Butler made a motion to accept the draft Orders as presented. Councilor Lussier seconded the motion and the motion carried with Councilor Varotsis opposed.

7. Next Meeting

The next meeting will be held on June 8, 2005.

8. Adjournment

Councilor Varotsis made a motion to adjourn. Councilor Patenaude seconded the motion and it was unanimously voted.

The meeting adjourned at approximately 10:15 a.m.